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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 30

Agenda ID # 12149

RESOLUTION E-4598

June 27, 2013

REDACTED

R E S O L U T I O N

Resolution E-4598. San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement with 70SM1 8ME LLC and a renewable power purchase agreement with Tallbear Seville LLC.

PROPOSED OUTCOME: This Resolution approves cost recovery for the renewable energy power purchase agreements between San Diego Gas & Electric Company and 70SM1 8ME LLC and Tallbear Seville LLC. The power purchase agreements are approved without modifications. The Commission denies SDG&E's request for the power purchase agreements to contribute toward SDG&E's Renewable Auction Mechanism procurement obligations.

SAFETY CONSIDERATIONS: The power purchase agreements between SDG&E and 70SM1 8ME LLC and Tallbear Seville LLC have terms which require 70SM1 8ME LLC and Tallbear Seville LLC to comply with all relevant safety and permitting requirements.

ESTIMATED COST: Costs of these power purchase agreements are confidential at this time.

By Advice Letter 2435-E filed on December 18, 2012.

SUMMARY

San Diego Gas & Electric Company's renewable energy power purchase agreements with 70SM1 8ME LLC and Tallbear Seville LLC comply with the Renewables Portfolio Standard procurement guidelines and are approved without modification.

San Diego Gas & Electric Company (SDG&E) filed Advice Letter 2435-E on December 18, 2012, requesting California Public Utilities Commission (Commission) review and approval of a renewable energy power purchase agreement between SDG&E and 70SM1 8ME LLC and a renewable energy power purchase agreement with Tallbear Seville LLC. The bilaterally negotiated 20-year power purchase agreements are for generation from two solar photovoltaic facilities that are being developed in Calipatria, Imperial County, California and Brawley, Imperial County, California. Each project will be 20 megawatts. The facilities are expected to achieve commercial operation in 2015.

This resolution approves the 70SM1 8ME LLC and Tallbear Seville LLC power purchase agreements without modification. SDG&E's execution of these power purchase agreements are consistent with SDG&E's 2012 RPS Procurement Plan, which the Commission approved in Decision 12-11-016.

Deliveries under the 70SM1 8ME LLC and Tallbear Seville LLC power purchase agreements are reasonably priced and fully recoverable in rates over the life of the power purchase agreements, subject to Commission review of SDG&E's administration of the power purchase agreements.

The following table provides a summary of the 70SM1 8ME LLC and Tallbear Seville LLC power purchase agreements:

Generating Facility	Technology Type	Term (Years)	Capacity (MW)	Annual Deliveries (GWh)	Online Date	Project Location
Tallbear Seville	Solar PV	20	20	59	24 months after CPUC approval	Brawley, CA
Calipatria	Solar PV	20	20	48	24 months after CPUC approval	Calipatria, CA

SDG&E also requests that the 70SM1 8ME LLC and Tallbear Seville LLC power purchase agreements contribute towards SDG&E's Renewable Auction Mechanism procurement obligations adopted in Decision 10-12-048. The

Commission denies this request due to SDG&E's request being inconsistent with Decision 10-12-048, which requires RAM procurement to be from projects located in one of the investor-owned utility service territories.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.20.² Under SB 2 (1X),³ the RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that the amount of electricity generated per year from eligible renewable resources be increased to an amount that equals an average of 20% of the total electricity sold to retail customers in California for the period 2011-2013; 25% of retail sales by December 31, 2016; and 33% of retail sales by December 31, 2020.⁴

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

Overview of the Renewable Auction Mechanism (RAM)

On December 18, 2010, the CPUC approved a new procurement mechanism called the Renewable Auction Mechanism (RAM) in Decision 10-12-048, as modified by Commission Resolutions E-4414 (August 14, 2011), E-4489 (April 19, 2012), E-4546 (November 8, 2012), and E-4582 (May 9, 2013).

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise specified.

³ SB 2 (1X) becomes effective on December 10, 2011; 90 days after the close of the Legislatures 2011 Extraordinary Session.

⁴ See SB 2 (1X) § 399.15(b)(2)(B).

The Commission has ordered the investor-owned utilities (IOUs) to procure 1,299 MW of system-side renewable distributed generation (for individual projects up to 20 MW in size) through a reverse auction using a standard contract. Of the 1,299 MW authorized, each utility has a separate RAM procurement obligation: 420.9 MW for PG&E, 723.4 MW for SCE, and 154.7 MW for SDG&E. To meet these RAM procurement obligations, the Commission ordered the IOUs to hold four auctions over two years and to seek approval of contracts executed from these auctions via Tier 2 advice letters filed with the Commission.

Additional background information about RAM, including links to relevant Commission decisions and resolutions, is available at:

<http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/Renewable+Auction+Mechanism.htm>.

NOTICE

Notice of Advice Letter 2435-E was made by publication in the Commission's Daily Calendar. SDG&E states that copies of the Advice Letter were mailed and distributed in accordance with Section IV of General Order 96-B.

PROTESTS

SDG&E Advice Letter 2435-E was timely protested by the Division of Ratepayer Advocates (DRA) on January 7, 2013. SDG&E responded to the protest on January 14, 2013.

Imperial Irrigation District and Sol Orchard LLC also provided letters supporting approval of Advice Letter 2435-E.

DISCUSSION

San Diego Gas & Electric Company requests approval of a renewable energy power purchase agreement with 70SM1 8ME LLC, approval of a renewable energy power purchase agreement with Tallbear Seville LLC, and contribution of the two renewable energy power purchase agreements towards its Renewable Auction Mechanism procurement obligation.

On December 18, 2012, San Diego Gas and Electric Company (SDG&E) filed Advice Letter (AL) 2435-E requesting California Public Utilities Commission (Commission) approval of a power purchase agreement (PPA) with 70SM1 8ME LLC (Calipatria), a PPA with Tallbear Seville LLC (Seville), contribution of the two PPAs towards its RAM procurement obligations. The Calipatria project is being developed through a joint venture between Gestamp and 8Minuteenergy. The Seville project is being developed by Regenerate Power and the Tallbear Group with the Tallbear Group being the majority interest.⁵

The two contracts were bilaterally negotiated and concern generation from two new solar 20 megawatt (MW) photovoltaic (PV) facilities – Calipatria and Seville. The projects are located in Calipatria, Imperial County, California and Brawley, Imperial County, California, respectively. Both projects will interconnect within the Imperial Irrigation District (IID) system and the power from the facilities will be delivered into CAISO at the Imperial Valley substation. The Calipatria project is expected to annually generate approximately 59 gigawatt-hours (GWh) of RPS-eligible generation, and the Seville project is expected to generate 48 GWh per year.

The facilities are expected to come online in 2015; thus, generation from the facilities could count towards SDG&E's RPS requirements in the second compliance period.⁶ The Commission's approval of the PPAs will authorize SDG&E to accept future RPS-eligible generation that could contribute towards SDG&E's 33 percent RPS requirement.

⁵ The Tallbear Group is a Native American owned and operated business that is certified as a Diverse Business Enterprise under Commission General Order 156

⁶ In addition to raising California's RPS requirement to 33% from 20%, SB 2 (1X) (Stats. 2011 (Simintian)) establishes three different compliance periods, 2011-2013, 2014-2016, and 2017-2020.

SDG&E requests that the Commission issue a resolution that:

1. The proposed agreements are reasonable; the proposed agreements are consistent with SDG&E's Commission-approved RPS Procurement Plan; and procurement from the proposed agreements will contribute towards SDG&E's RPS procurement obligation.
2. The proposed agreements are consistent with the goals and objectives of the Commission-approved Renewable Auction Mechanism, and the capacity of the proposed agreements will be counted towards SDG&E's RAM procurement obligation.
3. SDG&E's entry into the proposed agreements and the terms of such proposed agreements are reasonable; therefore, the proposed agreements are approved in their entirety and all costs of the purchase associated with the proposed agreements including for energy, green attributes, and resource adequacy are fully recoverable in rates over the life of the proposed agreements subject to Commission review of SDG&E's administration of the proposed agreements.
4. Generation procured pursuant to the proposed agreements constitutes generation from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.

We will address SDG&E's requests in two parts. First, we will address its request for approval of the proposed PPAs. Second, we will address SDG&E's request for the capacity of the proposed PPAs to be counted towards its RAM procurement obligation.

Energy Division Evaluated the Calipatria and Sevilla PPAs based on the following criteria:

- Consistency with bilateral contracting rules;
- Consistency with SDG&E's 2012 RPS Procurement Plan;
- Consistency with SDG&E's Least-Cost, Best-Fit requirements;
- RPS Procurement Portfolio Need;
- Cost Reasonableness and Net Market Value;

- Consistency with RPS Standard Terms and Conditions;
- Consistency with Portfolio Content Categories Requirements;
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard;
- Independent Evaluator review;
- Procurement Review Group participation;
- Long-Term Contracting Requirement; and
- Project Viability Assessment and Development Status.

Consistency with Bilateral Contracting Rules

Both the Calipatria and Sevilla PPAs were negotiated bilaterally. According to SDG&E, the parties pursued bilateral negotiations because the projects were not eligible to bid into the RAM program and the product offered was not being solicited in its 2012 RPS solicitation.

In D.06-10-019, modified by D.07-07-025, the Commission established rules pursuant to which the IOUs could enter into bilateral RPS contracts. SDG&E adhered to these bilateral contracting rules because the Calipatria PPA and Seville PPA are longer than one month in duration, were filed by advice letter, and were subject to the use of an Independent Evaluator (IE) pursuant to D.04-12-048.

In D.09-06-050, this Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the Calipatria PPA and Seville PPA were compared to other RPS offers received in SDG&E's 2011 RPS solicitation and recently executed contracts; the proposed agreements were reviewed by SDG&E's Procurement Review Group; and an Independent Evaluator oversaw the projects evaluations and PPAs negotiations. Also, the contracts are reasonably priced, as discussed in more detail below.

The Calipatria PPA and Seville PPA are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with SDG&E's 2012 RPS Procurement Plan

Pursuant to statute, SDG&E's RPS Procurement Plan (Plan) includes an assessment of supply and demand to determine the optimal mix of renewable generation resources; description of potential RPS compliance delays; status update of projects within its RPS portfolio; an assessment of the project failure and delay risk within its RPS portfolio; and a bid solicitation protocol setting forth the need for renewable generation of various operational characteristics.⁷ California's RPS statute also requires that the Commission review the results of a renewable energy resource solicitation submitted for approval by a utility.⁸ The Commission reviews the results to verify that the utility conducted its solicitation according to its Commission-approved procurement plan.⁹

In SDG&E's 2012 RPS Plan, SDG&E expressed a commitment to meet its RPS requirements in a cost-effective manner. SDG&E's 2012 RPS Plan called for SDG&E to issue competitive solicitations for the purchase and sale of RPS-eligible energy and/or RECs. SDG&E also stated in its Plan that bilateral offers would be considered if they were competitive when compared against recent solicitation offers and provide benefits to SDG&E customers. SDG&E further stated that it would consider short-term contracts when it is short in the most immediate Compliance Period, but long in the subsequent Compliance Period. In addition, SDG&E noted that it would consider procurement strategies that maximize the product category limitations in order to optimize ratepayer value across compliance periods. Lastly, SDG&E's Plan discussed utility plans to pursue renewable energy generation development partnerships and utility-owned resources.

The Calipatria and Seville PPAs are for renewable generation that fit SDG&E's identified renewable resource needs. The bilateral PPAs are for energy and RECs from renewable energy facilities that will begin deliveries in 2015.

The Calipatria and Seville are consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.

⁷ Pub. Util. Code § 399.13(a)(5).

⁸ Pub. Util. Code § 399.13(d).

⁹ SDG&E's 2012 RPS Procurement Plan was approved by D.12-11-016 on November 8, 2012.

Consistency with SDG&E's least-cost best-fit (LCBF) methodology

In D.04-07-029, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.¹⁰ The decision offers guidance regarding the process by which the utility ranks bids in order to select or “shortlist” the bids with which it will commence negotiations. As described in its RPS Procurement Plan, SDG&E's LCBF bid evaluation includes a quantitative analysis and qualitative criteria. SDG&E's quantitative analysis or market valuation includes evaluation of price, time of delivery factors, transmission costs, congestion costs, and resource adequacy. SDG&E's qualitative analysis focuses on comparing similar bids across numerous factors, such as location, benefits to minority and low income areas, resource diversity, etc.

SDG&E negotiated the Calipatria PPA and Seville PPA bilaterally; therefore, the proposed PPAs did not compete directly with other RPS projects. In AL 2435-E, SDG&E explains that it evaluated the Calipatria PPA and Seville PPA using the same LCBF evaluation methodology it employs for evaluating bids from its annual RPS solicitations. Thus, SDG&E used its LCBF methodology to evaluate both the Calipatria and Seville proposed PPAs. See the “Cost Reasonableness and Net Market Value” section of this resolution for a discussion of how the proposed PPAs compare to SDG&E's 2011 RPS solicitation¹¹ and recently executed contracts. In addition, see Confidential Appendix A for SDG&E's LCBF evaluation of the project.

The Calipatria and Seville PPAs were evaluated consistent with the LCBF methodology identified in SDG&E's RPS Procurement Plan

SDG&E's RPS Procurement Portfolio Need

Energy Division forecasts that SDG&E may need incremental renewable generation in the third compliance period (2017-2020).¹² This Energy Division

¹⁰ See § 399.14(a)(2)(B).

¹¹ The Calipatria and Seville PPAs were compared to SDG&E's 2011 solicitation because at the time of contract execution, it was the most recent annual RPS solicitation.

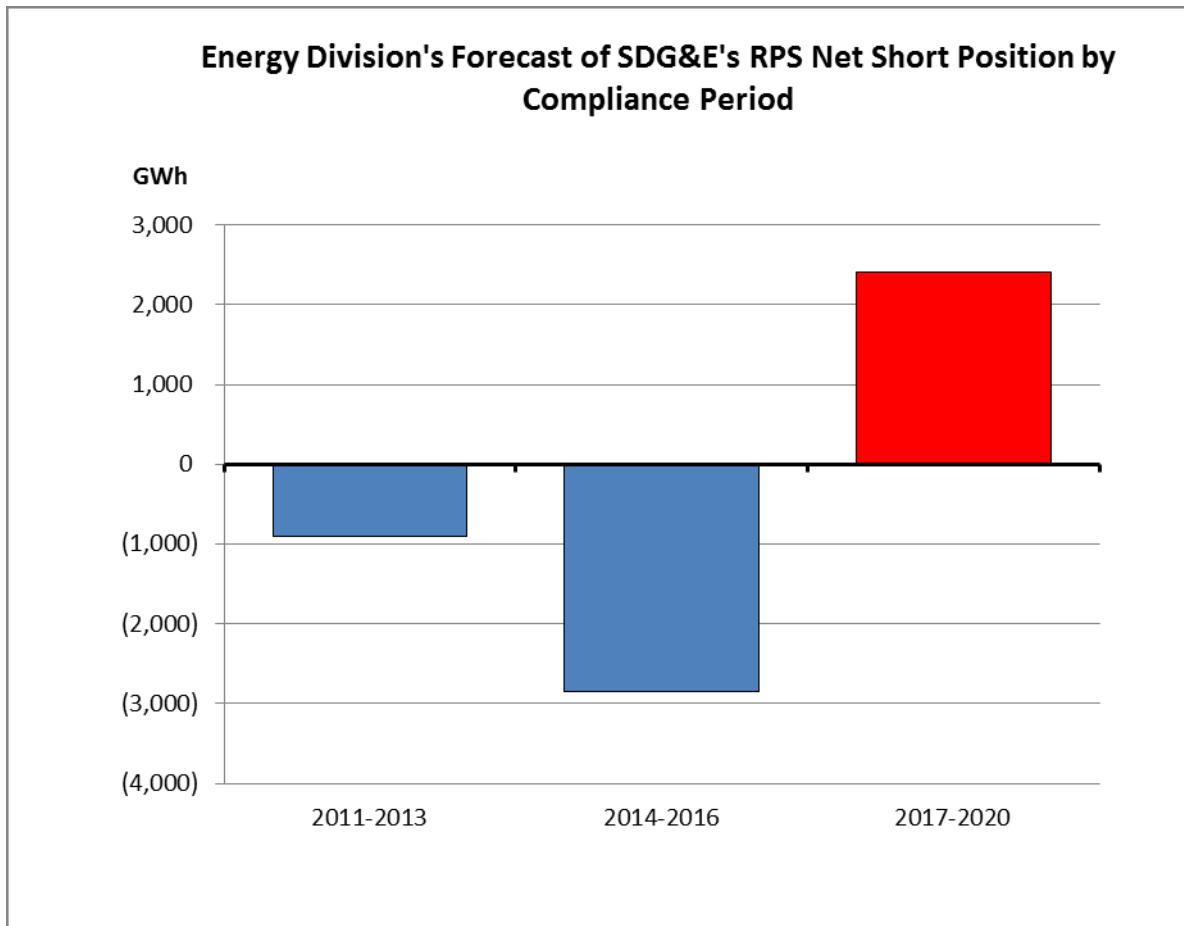
¹² In addition to increasing California's RPS requirement to 33 percent from 20 percent, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session) establishes three different compliance periods. In D.11-12-020 the Commission defined the compliance periods (2011-2013; 2014-2016; and 2017-2020) and the methodology for calculating the RPS procurement quantity requirements for each compliance period.

forecast takes into account a certain amount of contract failure with SDG&E's RPS procurement portfolio. Figure 1 below depicts Energy Division's forecast of SDG&E's RPS net long/short position for each compliance period under a risk-adjusted scenario.¹³ This graphical illustration shows that SDG&E may have a need for incremental RPS procurement in the third compliance period, but has more than sufficient RPS resources under contract during the second compliance period 2014-2016.¹⁴ All or a portion of the forecasted excess procurement from the second compliance period could potentially be applied towards future RPS requirements, and thus could reduce SDG&E's RPS needs in compliance period three or later.

¹³ Energy Division staff's forecast of SDG&E's RPS Procurement Portfolio is based on SDG&E's December 2012 Preliminary Annual RPS Report, SDG&E's March 2012 Project Development Status Report, and the Commission's RPS Project Status Table. The Commission's forecast does not include any contracts pending Commission approval, executed - but not filed, nor contracts under negotiation.

¹⁴ Energy Division staff made several assumptions in developing its forecast: 1) operational projects will generate 100% of contracted generation; 2) projects that have not reached full commercial operation will have a 75 percent rate of meeting the terms and conditions of the PPAs; 3) no carrying over of forecasted excess generation from one compliance period to another because SDG&E may or may not choose to apply all excess procurement towards subsequent requirements (but, if all forecasted eligible excess procurement is applied to future compliance periods, SDG&E is forecasted to have a net long position, instead of a net short position, for Compliance Period 2017-2020); and 4) prior deficits as estimated, but not verified will need to be met.

Figure 1: Energy Division forecasts that SDG&E may have a need for incremental RPS procurement in the third compliance period, 2017-2020



Cost Reasonableness and Net Market Value

The Commission's reasonableness review for RPS PPAs includes a comparison of the proposed PPA's price and net market value (the result of the LCBF calculation) relative to other RPS offers received in recent RPS solicitations and to contracts executed in the 12 months prior to the proposed PPA's execution date. Using this methodology and the confidential analysis provided by SDG&E in AL 2435-E, the Commission determines that the net market values of the Calipatria PPA and Seville PPA are comparable to other RPS offers and that the costs of the Calipatria PPA and Seville PPA are reasonable. (See Confidential Appendix A for a discussion of the contractual pricing terms.)

The Calipatria PPA and Seville PPA reasonably compare from a price and net market value basis to the results of SDG&E's 2011 RPS solicitation and other recently executed contracts.

Payments made by SDG&E under the Calipatria PPA and Seville PPA are fully recoverable in rates over the life of the PPAs, subject to Commission review of SDG&E's administration of the Calipatria PPA and Seville PPA.

Consistency with RPS Standard Terms and Conditions

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently in D.10-03-021, as modified by D.11-01-025, the Commission further refined these STCs.

The Calipatria PPA and Seville PPA include the Commission adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Consistency with Portfolio Content Category Requirements

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director of Energy Division to require the investor-owned utilities to provide information regarding the proposed contract's portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another, less preferred, portfolio content category.

In AL 2435-E, SDG&E claims that the product procured pursuant to the Calipatria PPA and Seville PPA will be classified as Portfolio Content Category 1. To support its claim, SDG&E asserts that the PPAs require Calipatria and Seville to provide both the energy and renewable energy certificates associated with generation from the Calipatria and Seville projects and SDG&E states that the facilities will interconnect with the Imperial Irrigation District transmission system, a California balancing authority area.

Consistent with D.11-12-052, SDG&E provided information in AL 2435-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the Calipatria PPA and Seville PPA.

In this resolution, the Commission makes no determination regarding the Calipatria PPA's and Seville PPA's portfolio content category classification. The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which requires consideration of several factors based on various showings in a compliance filing. Thus, making a portfolio content category classification determination in this resolution regarding the procurement considered herein is not appropriate. SDG&E should incorporate the procurement resulting from the Calipatria PPA and Seville PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard

California Pub. Util. Code §§ 8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.¹⁵

D.07-01-039 adopted an interim Emissions Performance Standard (EPS) that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.¹⁶

The Calipatria PPA and Seville PPA meet the conditions for EPS compliance because it is for intermittent generation with a capacity factor of less than 60 percent.

¹⁵ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code § 8340 (a).

¹⁶ D.07-01-039, Attachment 7, p. 4.

Independent Evaluator Review

SDG&E retained independent evaluator (IE) Jonathan Jacobs of PA Consulting Group to oversee SDG&E's bilateral negotiations with Calipatria and Seville and to evaluate the PPAs' overall merits for CPUC approval. AL 2435-E included a public and confidential version of the independent evaluator's report.

In the IE's opinion, the Calipatria and Seville PPAs reflect fair negotiations, terms and conditions appear to be reasonable and fair, and cost competitive. For these reasons, the IE's opinion is that the Calipatria and Seville PPAs merit Commission approval.

Consistent with D.06-05-039, an independent evaluator oversaw SDG&E's negotiations with Calipatria and Seville.

Procurement Review Group Participation

The Procurement Review Group (PRG) was initially established in D.02-08-071 to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission.¹⁷ SDG&E asserts that both the Calipatria PPA and Seville PPA were discussed at PRG meetings held on October 19, 2012 and November 16, 2012.

Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Calipatria PPA and Seville PPA.

Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years duration for compliance with the RPS program.¹⁸ In

¹⁷ SDG&E's PRG includes representatives of the Union of Concerned Scientists, the Coalition of California Utility Employees, The Utility Reform Network, the California Public Utility Commission's Energy Division and Division of Ratepayer Advocates, and the California Department of Water Resources.

¹⁸ For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038)

order for the procurement from any short-term contract(s) signed after June 1, 2010 to count for RPS compliance the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).¹⁹

Because the Calipatria PPA and Seville PPA are greater than 10 years in length, the PPAs will contribute to SDG&E's long-term contracting requirement established in D.12-06-038.

Project Viability Assessment and Development Status

SDG&E asserts that the both the Calipatria and Seville projects are viable and will be developed according to the terms and conditions in the PPAs. SDG&E bases its assertion on its evaluation of the projects' viability using the Commission-approved project viability calculator, which uses standardized criteria to quantify a project's strengths and weaknesses in key areas of renewable project development. Additionally, SDG&E provided the following information about the project's developer and development status.

Developer experience

Gestamp Solar is the developer of the Calipatria project. Gestamp Solar is a developer of large-scale solar power plans with development, engineering procurement and construction (EPC), and operation and maintenance (O&M) experience. It has been involved in 300 MW of solar development as either the EPS or equipment supplier. It also is currently developing over 870 MW of photovoltaic facilities worldwide.

Regenerate Power is the developer of the Seville project. Regenerate Power principals have various previous experiences in developing utility projects including generation plants and transmission facilities.

¹⁹ Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

Site control and permitting status

Both proposed facilities are to be located on private lands and under full site control. A Conditional Use Permit has been approved by the Imperial County Board of Supervisors for the Calipatria project. Permits for the Seville project are expected to be obtained in a timely manner to achieve the conditions precedent in the PPA.

Interconnection and transmission

Both projects will interconnect to the Imperial Irrigation District transmission system and have entered into Generator Interconnection Agreements with IID. Pursuant to the PPAs, generation is required to be delivered to the CAISO import point at Imperial Valley substation.

Financing Plan

The projects are expected to be financed through a combination of debt, ash equity, and tax equity. Additionally, both projects are expected to receive Investment Tax Credits.

Safety Considerations

The power purchase agreements between SDG&E and Calipatria and Seville are based on the RAM contract. Included in the RAM contract are terms and conditions which require Calipatria and Seville to comply with all relevant safety and permitting requirements.

RPS Eligibility and CPUC Approval

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS,

and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.²⁰

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), Decision 03-06-071, or other applicable law.”²¹

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, neither can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of contracts.

Energy Division Review of SDG&E’s Request for PPAs to Contribute towards SDG&E’s Renewable Auction Mechanism Procurement Obligations

In AL 2435-E, SDG&E also requests that the Calipatria PPA and Seville LLC PPA contribute towards SDG&E’s RAM procurement obligations adopted in D.10-12-048. SDG&E argues that while the projects did not bid into a RAM solicitation the projects meet all required RAM eligibility criteria except for one. Specifically, the projects are not located within SDG&E’s service territory which

²⁰ See, e.g. D.08-04-009 at Appendix A, STC 6, Eligibility.

²¹ See, e.g. D.08-04-009 at Appendix A, STC 1, CPUC Approval.

is required by D.10-12-048. Additionally SDG&E argues that the generation from the projects will ultimately be delivered to SDG&E's service territory.

In D.10-12-048, it states, as SDG&E acknowledges, that "a project must be located in one of the investor-owned utility service territories."²² Thus, SDG&E's request for the Calipatria PPA and Seville PPA to contribute towards SDG&E's RAM procurement obligations is inconsistent with D.10-12-048, and therefore it is denied.

DRA protests regarding the eligibility of the Calipatria PPA and Seville PPA for RAM is accepted

DRA asserts in its protest to SDG&E AL 2435-E that the Commission should reject SDG&E's request for the Calipatria PPA and Seville PPA to count towards SDG&E's RAM obligation because it would undermine the principles and goals of the RAM program as well as sidestep the rules and processes established for the RAM program. DRA argues that the RAM program was authorized as a competitive solicitation and that D.10-12-048 established a clear rule that bilateral negotiations are prohibited. Additionally, DRA states that a project must be located in one of the investor-owned utility service territories.

In SDG&E's reply to DRA's protest, SDG&E recommends that DRA's protest be denied because accepting the protest would place additional burdens on ratepayers by requiring them to purchase more capacity to satisfy its RAM procurement obligations. SDG&E further argues that the PPAs are good for the ratepayers due to their value, benefit, and competitive pricing and outweigh DRA's concerns.

The Commission agrees with DRA that the Calipatria PPA and Seville PPA should not count towards SDG&E's RAM procurement obligation. As stated in the previous section of this Resolution and by DRA, D.10-12-048 states that a project must be located in one of the investor-owned utility service territories for it to be eligible for RAM. Therefore, DRA's protest to reject SDG&E's request to count the Calipatria PPA and Seville PPA towards its RAM procurement obligations is accepted.

²² Ordering Paragraph 1(c)

Confidential Information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on May 28, 2013.

No comments were filed.

FINDINGS AND CONCLUSIONS

1. The Calipatria PPA and Seville PPA are consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
2. The Calipatria PPA and Seville PPA are consistent with SDG&E's 2012 RPS Procurement Plan, as approved by D.12-11-016.
3. The Calipatria PPA and Seville PPA were evaluated consistent with the least-cost best-fit methodology identified in SDG&E's RPS Procurement Plan.

4. The Calipatria PPA and Seville PPA reasonably compare from a price and net market value basis to the results of SDG&E's 2011 RPS solicitation and recently executed contracts.
5. Payments made by SDG&E under the Calipatria PPA and Seville PPA are fully recoverable in rates over the life of the PPAs, subject to Commission review of SDG&E's administration of the PPAs.
6. The Calipatria PPA and Seville PPA include the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as amended by D.11-01-025.
7. Consistent with D.11-12-052, SDG&E provided information in AL 2435-E regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Calipatria PPA and Seville PPA.
8. The Calipatria PPA and Seville PPA meet the conditions for EPS compliance because it is for intermittent generation with a capacity factor of less than 60 percent.
9. Pursuant to D.02-08-071, SDG&E's Procurement Review Group participated in the review of the Calipatria PPA and Seville PPA.
10. Because the Calipatria PPA and Seville PPA are greater than 10 years in length, the PPAs will contribute to SDG&E's long-term contracting requirement established in D.12-06-038.
11. SDG&E asserts that the Calipatria and Seville projects are viable and will provide renewable energy according to the terms and conditions in the Calipatria PPA and Seville PPA.
12. Procurement pursuant to the Calipatria PPA and Seville PPA is procurement from eligible renewable energy resources for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
13. The immediately preceding finding shall not be read to allow generation from a non-RPS eligible renewable energy resource under these PPAs to count towards an RPS compliance obligation. Nor shall that finding absolve SDG&E of its obligation to enforce compliance with these PPAs.

14. SDG&E's request for the Calipatria PPA and Seville LLC PPA to contribute towards SDG&E's RAM procurement obligations is denied due to the request being inconsistent with D.10-12-048.
15. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
16. DRA's protest to reject SDG&E's request to count the Calipatria PPA and Seville PPA towards its RAM procurement obligations is accepted.
17. AL 2435-E should be approved effective today without modification.

THEREFORE IT IS ORDERED THAT:

1. San Diego Gas & Electric Company's Advice Letter 2435-E, requesting Commission review and approval of a renewable energy power purchase agreement with 70SM1 8ME LLC and a renewable power purchase agreement with Tallbear Seville LLC, is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 27, 2013; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Evaluation Summary of the Calipatria PPA and Seville PPA

[Redacted]